



December 23, 2011

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator Jackson:

On behalf of state and local governments, we appreciate the opportunity to provide input on upcoming modifications to the current “waters of the U.S.” definition in the Clean Water Act (CWA) as the U.S. Environmental Protection Agency (EPA) develops the forthcoming regulation. By EPA’s own admission, state and local governments are valuable partners in ensuring clean water, and we look forward to working together with EPA to ensure that partnership remains strong.

Over the course of the past year, our organizations have been consistent in our comments on the “waters of the U.S.” issue. In a letter to the Agency on July 29, 2011 regarding the Draft Guidance on Identifying Waters Protected by the Clean Water Act (Draft Guidance), we asked for an understandable and straight-forward rulemaking process, inclusive of a federalism consultation process with state and local governments. Additionally, we requested a study of the full costs this proposed policy would have on all CWA programs, beyond the 404 permit program.

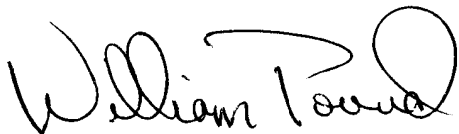
We would like to thank EPA for recognizing state and local government concerns and acknowledge EPA’s efforts to provide an open and honest dialogue during the federalism consultation process pursuant to Executive Order 13132 on this forthcoming regulation. We also thank you for moving forward with a formalized and transparent rulemaking process, rather than finalizing the Draft Guidance. We urge EPA to continue on the regulatory path rather than moving forward with the Draft Guidance, and as you do so, urge you to take our continuing concerns under consideration.

EPA provided a great deal of information as part of the federalism consultation meetings held on November 10 and December 7, but we remain concerned that the total impact of the forthcoming regulation on state and local governments is not being examined. While the agency has determined that the forthcoming regulation is a “definitional rule” and will have no direct implementation or compliance

costs, we are pleased that EPA has initiated an effort to quantify and account for these indirect costs. However, we remain concerned that the breadth of the economic analysis done by the agency will be limited by a lack of available data to ensure that the agency is able to quantify the full range of the impacts. We once again urge EPA to undertake any necessary steps, to the extent feasible, to ensure that the final economic analysis for the regulation is able to quantify the full impact the definitional change will have on all CWA programs. Furthermore, we request that EPA provide information regarding the method used to calculate the benefits associated with this change to the federalism consultation organizations prior to the rule's publication, and request that the methodology be explained with the rule's publication in the Federal Register.

As partners in protecting America's water resources, it is essential that state and local governments have a clear understanding of the vast affect that a change to the definition of "waters of the U.S." will have on all aspects of the CWA. We look forward to continuing to work with EPA as the regulatory process moves forward and further decisions are made regarding the scope of the forthcoming regulation.

Sincerely,



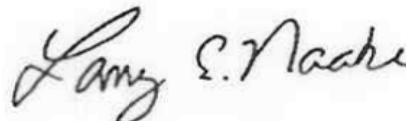
William T. Pound  
Executive Director  
National Conference of State Legislatures



Tom Cochran  
CEO & Executive Director  
The United States Conference of Mayors



Donald Borut  
Executive Director  
National League of Cities



Larry Naake  
Executive Director  
National Association of Counties

- cc: Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs  
Cecilia Munoz, Director of Intergovernmental Affairs, Office of Intergovernmental Affairs  
Sen. Barbara Boxer, Chairman, Senate Committee on Environment and Public Works  
Sen. James Inhofe, Ranking Member, Senate Committee on Environment and Public Works  
Rep. John Mica, Chairman, House Committee on Transportation and Infrastructure  
Rep. Nick Rahall, Ranking Member, House Committee on Transportation and Infrastructure